

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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AMUSEMENT INDUSTRY, INC., dba WESTLAND
INDUSTRIES; PRACTICAL FINANCE CO., INC.,

Plaintiffs,

- against -

MOSES STERN, aka MARK STERN; JOSHUA SAFRIN,
FIRST REPUBLIC GROUP REALTY LLC, EPHRAIM
FRENKEL, LAND TITLE ASSOCIATES ESCROW,

Defendants.

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JOSHUA SAFRIN,

Defendant/Third Party-Crossclaim-
Counterclaim-Plaintiff,

- against -

STEPHEN FRIEDMAN, STEVEN ALEVY, BUCHANAN
INGERSOLL & ROONEY, P.C., BANKERS CAPITAL
REALTY ADVISORS LLC, and FIRST REPUBLIC GROUP
CORP.,

Third Party Defendants,

- and -

MOSES STERN, aka MARK STERN, FIRST REPUBLIC
GROUP REALTY LLC, EPHRAIM FRENKEL, and LAND
TITLE ASSOCIATES ESCROW,

Defendants/Crossclaim Defendants,

- and -

AMUSEMENT INDUSTRY, INC., dba WESTLAND
INDUSTRIES, PRACTICAL FINANCE CO., INC.

Plaintiffs/Counterclaim Defendants.
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**DECLARATION OF MICHAEL A. LYNN IN SUPPORT OF STERN DEFENDANTS' MOTION TO
DISMISS CROSS-CLAIMS ASSERTED BY DEFENDANT JOSHUA SAFRIN**

MICHAEL A. LYNN, pursuant to 28 U.S.C. § 1746, hereby declares under penalty of perjury under the law of the United States of America as follows:

1. I am over 18 years of age and am (i) associated with the law firm of Kaye Scholer LLP (“Kaye Scholer”), (ii) a member of the bar of the State of New York, and (iii) a member of this Court.

2. Kaye Scholer is co-counsel to defendants Mark Stern (“Stern”) and First Republic Group Realty LLC (“First Republic”) (collectively, the “Stern Defendants”). I submit this declaration in support of the Stern Defendants’ motion to dismiss all claims asserted against them by defendant Joshua Safrin (“Safrin”) in his Answer to Plaintiffs’ Complaint filed on July 18, 2008.

3. On May 1, 2008, Safrin filed a third-party complaint in which he asserted purported cross-claims against defendants Stern, First Republic, Ephraim Frenkel and Land Title Associates Escrow, purported counterclaims against plaintiffs Amusement Industry, Inc. and Practical Finance Co., Inc. and third-party claims against Stephen Friedman, Steven Alevy, Buchanan Ingersoll & Rooney P.C., Bankers Capital Realty Advisors LLC and First Republic Group Corp. The claims asserted against Stern and First Republic included claims for contribution and indemnification (Count 1) and claims for violations of Sections 50 and 51 of the New York Civil Rights statute and of the California common law right of privacy/commercial misappropriation (Counts V-VIII).

4. On May 29, 2008, Safrin filed an amended third party complaint (the “Amended Third Party Complaint”) which asserted the same claims for relief against the defendants named in the original third-party complaint.

5. On June 9, 2008, Stern and First Republic moved for an order striking or dismissing the Amended Third Party Complaint as against them pursuant to Rule 14(a) of the Federal Rules of Civil Procedure for improperly asserting cross-claims against them in a third-party complaint and pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state claims upon which relief could be granted.

6. At the July 1, 2008 conference with the Court, after hearing argument on the procedural aspects of the Stern Defendants' motion to dismiss the claims asserted against them by Safrin in the Amended Third Party Complaint, the Court directed Safrin to file an answer to plaintiffs' complaint by July 18 and to assert his claims against the Stern Defendants as cross-claims in that answer. The Court also stated that, in lieu of filing a new motion to dismiss against the cross-claims that would be asserted against them in Safrin's answer, the Stern Defendants could instead file a declaration with the Court which withdrew the procedural arguments raised in their prior motion to dismiss, but restated their substantive grounds for moving to dismiss the claims asserted against them by Safrin.

7. On July 18, 2008, Safrin filed his answer to plaintiffs' complaint, affirmative defenses and asserted cross-claims against the Stern Defendants, Ephraim Frenkel and Land Title Associates Escrow. I have reviewed Safrin's answer and cross-claims and the cross-claims asserted against the Stern Defendants by Safrin appear to be the same claims that Safrin asserted against the Stern Defendants in his Amended Third Party Complaint.

8. Accordingly, on behalf of the Stern Defendants, I file this declaration to inform the Court that, in lieu of filing a new motion to dismiss the cross-claims asserted by Safrin against the Stern Defendants in Safrin's Answer, the Stern Defendants (i) restate and reincorporate the substantive grounds for dismissal that they asserted in their June 9, 2008

memorandum of law pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and (ii) withdraw that portion of their prior motion seeking to dismiss the claims pursuant to Rule 14 of the Federal Rules of Civil Procedure.

9. I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 28, 2008

s/sMichael A. Lynn

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Republic Group Realty LLC